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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations concerning methods of withdrawing funds from the Thrift Savings Plan (TSP). These regulations reflect changes made to eligibility requirements for the withdrawal of accounts from the Thrift Savings Plan resulting from the enactment of section 9 of the Federal Workforce Restructuring Act of 1994. That law provides that all of the withdrawal methods formerly reserved for persons retiring from Government employment, and all related spousal rights, would become available to all Thrift Savings Plan participants who separate from Government employment, regardless of the person's length of service or retirement eligibility at the time of separation.

EFFECTIVE DATE: These rules are effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942-1661.

SUPPLEMENTARY INFORMATION: The TSP was originally established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335. FERSA set forth provisions, found in subchapter III of chapter 84 of title 5, United States Code, for the administration of the TSP. Provisions concerning TSP withdrawals were found primarily in sections 8433 and 8434 of title 5. Provisions concerning spousal rights relating to withdrawals

were found primarily in section 8435 of title 5.

As originally enacted, FERSA conditioned eligibility for the various withdrawal methods upon eligibility for basic retirement benefits. Consequently, persons without such eligibility upon separation from Government employment (generally less than 5 years of service) were not permitted to leave their accounts in the TSP and were only permitted to withdraw them by transferring them to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. They could not receive a cash payment of their account. Persons with 5 or more years of service could leave their accounts in the TSP and had more withdrawal options, but cash payment options were only available to them when they reached retirement age. Spousal rights were also conditioned upon the retirement eligibility of the participant at time of separation.

These rules proved confusing to participants and difficult to administer, requiring, for example, various withdrawal forms depending upon the participant's retirement eligibility. As a result of Public Law 103-226, which was enacted on March 30, 1994, all TSP participants who separate from Government employment will now have the same withdrawal options available to them.

Spousal rights rules were also simplified by Public Law 103-226. Under the new rules, spouses of all FERS participants who separate from Government service with an account balance of more than \$3,500 have the right to a survivor annuity, unless the spouse waives that right. The required annuity is a joint life annuity with the spouse with 50 percent survivor benefits, level payments, and no cash refund feature. Spouses of Civil Service Retirement System (CSRS) participants are entitled to notice whether or not the participant separated from Federal service with eligibility for basic retirement benefits. Public Law 103-226 eliminated the requirement to notify former spouses of FERS and CSRS participants who separated from Federal service without eligibility for basic retirement benefits that the participant is withdrawing his or her TSP account.

On December 28, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 66796)

proposing a new subpart 1650 reflecting the new simplified TSP withdrawal rules. Previously, on September 13, 1994, the Board had published amendments to spousal rights regulations in the **Federal Register** (59 FR 46934) reflecting the changes in spousal rights rules made by the new legislation. Additionally, the September 13, 1994 proposed amendments also amended the rules for obtaining an exception to the spousal waiver and notice requirements to allow participants seeking such an exception to submit copies of documents rather than originals or certified copies and to use statements instead of affidavits and declarations. Further, those amendments provided that a withdrawal form received within one year of an approved exception may be processed without obtaining a new exception.

The Board is now issuing both sets of regulations in this final rule promulgating new Part 1650. The Board did not receive any comments on the proposed rule issued on December 28, 1994. However, the Board did receive one comment on the proposed changes to spousal rights rules published on September 13, 1994. The comment concurred with the proposed revisions to the spousal rights rules, including the elimination of the word "current" when referring to the spouse. The comment recommended that the word "current" be included in the title to the subpart dealing with spousal rights because subpart A includes a definition of "current spouse." However, in accordance with the changes made by Public Law 103-226, the definitions of both "former spouse" and "current spouse" have been removed from the definitions section of part 1650 and have been replaced by a definition of "spouse." Thus, it is no longer necessary to include the term "current spouse" in the title to the subpart dealing with spousal rights.

The comment also recommended that the title to 5 CFR 1650.17 be revised to replace the word "notification" with the word "notice" to align with title with other changes made to subpart G. This change has been made in the final rule.

The Board has made a number of other changes to the proposed rule published on September 13, 1994. Based upon the experience gained in rewriting the remainder of part 1650, as issued on

December 28, 1994, the Board has decided to rewrite and reorganize the spousal rights provisions, which the September 13 proposal only amended. This is being done in order to set forth more clearly the simplified spousal rights rules enacted by Public Law 103-226. Therefore, new § 1650.18 deals comprehensively with the rights of spouses of FERS participants, new § 1650.19 deals with the right of the spouses of CSRS participants to notice, and new § 1650.20 deals with spousal rights relating to changes in withdrawal elections. The sections concerning the granting of spousal waivers have been changed only by redesignating some of the paragraphs for the sake of clarity.

The Board has also made one change to the regulations published on December 28, 1994. Previously, the definition of an "insurable interest" found at § 1650.10(b)(4)(i), the existence of which would allow the purchase of a joint life annuity for the participant and a person other than his or her spouse, included a common-law spouse. However, the Board has determined that, if a person is a common-law spouse in a jurisdiction that recognizes common-law marriages, that person is treated under the law as being the spouse in all respects. Therefore, in the final regulations the treatment of a common-law spouse has been moved from the definition of "insurable interest" to the definition of "spouse" found in § 1650.1. This change makes it clear that a common-law spouse will be treated as a legal spouse for all purposes under these regulations.

In reissuing part 1650, the Board also decided to reorganize some of its provisions, to publish some provisions separately, and to eliminate others. Therefore, under this final rule, original subpart G, Spousal Rights, is designated in new part 1650 as subpart D. A new subpart, dealing with minimum distributions and to be designated as subpart E, will be issued separately. The subparts dealing with court-ordered payments from TSP accounts and death benefits are each being issued as separate parts in the Code of Federal Regulations. Experience has shown that each of these areas has complex rules which are different from those used to process withdrawals. Finally, the subpart entitled "Denial of Benefits," which was originally published as subpart K of part 1650, is being eliminated entirely. Experience in paying withdrawal benefits has shown that there is no need for a formal "claims" procedure with respect to those benefits. Participants or others who wish to question or challenge certain aspects of a TSP withdrawal are

free to do so simply by contacting the TSP Service Office or the Board. Each case must often be addressed or handled on its own merits, although, as permitted in § 1650.6, the account can be "frozen" while the matter is under review. The Board currently sees no merit in having particular procedures which participants must follow in order to request such a review. Further, participants and beneficiaries remain free to pursue any claim for benefits in Federal court pursuant to 5 U.S.C. 8477.

Section-by-Section Analysis

Subpart A

Subpart A of part 1650 sets forth the general rules affecting a participant's eligibility to withdraw his or her TSP account.

Section 1650.1 sets forth definitions of terms used in part 1650. The TSP is a defined contribution retirement plan, similar to a private sector 401(k) plan, for persons employed by the Federal Government. It is administered by the Board, an independent Federal agency within the Executive Branch, pursuant to the provisions of FERSA. Thus § 1650.1 provides general definitions for the terms "Board," "TSP" and "Plan."

Participants in the Plan are generally covered under either the Federal Employees' Retirement System (FERS), established in 1986 along with the TSP, or the Civil Service Retirement System (CSRS), which was the previous retirement system for Federal employees. However, some Federal employees, such as those employed by the State Department, are covered under separate retirement systems, which are modeled after either FERS or CSRS. Therefore, definitions of "FERS" and "CSRS" are provided which make it clear that these terms also encompass "equivalent retirement systems" such as those for State Department employees.

Definitions are also provided for the terms "account balance," "participant," and "spouse." The term "account balance," is defined to mean the nonforfeitable, valued account balance as of the month-end prior to a withdrawal. Pursuant to 5 U.S.C. 8432(g) and part 1603, Vesting, Agency Automatic (1%) Contributions of persons who separate with less than three years (or in some cases two years) of service are forfeited to the TSP prior to withdrawal of an account. Also, as noted in the discussion of § 1650.7, only the most recent valued account balance is eligible to be withdrawn. Therefore, it was deemed preferable to define "account balance" to mean the nonforfeitable (also referred to as "vested"), valued account balance

rather than to repeat both modifiers each time the term was used. The term "participant" rather than "employee" is used to describe persons having a TSP account, since the withdrawal rules primarily affect people who have ceased to be "employed" but who are still participating in the Plan.

The term "spouse" is defined to include any person to whom the participant is married (as determined under the laws of the appropriate jurisdiction) on the date the participant signs a TSP withdrawal form asking him or her to state marital status. This definition recognizes that the TSP does not have information to determine marital status as of the date of separation or as of the date of payment. Instead, the TSP must rely upon the statement of the participant as to his or her marital status when the participant files TSP withdrawal forms. These statements are accompanied by a warning that a false statement is subject to criminal penalties under 18 U.S.C. 1001. The regulation makes it clear that a separated spouse is treated as a spouse under these rules. The regulation also includes in the definition of "spouse" a common-law spouse with whom the person is living in a jurisdiction that recognizes common-law spouses. Again, the participant is responsible for informing the TSP if he or she has common-law spouse under this definition.

Section 1650.2 states the general rule that, as a result of Public Law 103-226, all TSP participants who separate from Government employment have the right to choose any of the TSP withdrawal options. Those withdrawal options are set forth in subpart B. However, the availability of those withdrawal options may be affected by two other sets of rules. First, the spousal rights provisions of FERSA restrict the withdrawal options of married participants covered by the Federal Employees' Retirement System (FERS participants) to the 50 percent joint life annuity with level payments and no cash refund feature unless the spouse waives his or her right to that option. Married participants covered by the Civil Service Retirement System (CSRS participants) are not restricted in their choice of withdrawal options, but the law requires that their spouses be notified of the withdrawal method the participant chooses. The rules implementing the changes to spousal rights resulting from Public Law 103-226 are found in subpart D.

Second, the rules relating to required minimum distributions, which are found in section 401(a)(9) of the Internal Revenue Code, require tax-qualified

government retirement plans, including the TSP, to begin making distributions to participants by April 1 of the year following the year they become age 70½ or the year they separate from Government employment, whichever is later. These rules also require that, in certain circumstances, minimum distribution amounts be paid directly to the participant rather than transferred to an IRA or other eligible retirement plan or used to purchase an annuity. Consequently, the minimum distribution rules can limit the ability of some participants to have their entire accounts paid according to the withdrawal method they choose under these rules. The Board intends to publish separate rules, adding subpart E to part 1650, describing the effect of minimum distributions on TSP accounts. Reference to the minimum distribution rules is required here because they limit the participant's ability to withdraw the entire account according to his or her choice. Until regulations are issued adding subpart E to part 1650, those rules will simply be referred to as "minimum distribution requirements."

Third, the rules concerning matrimonial court orders and child support and alimony orders can affect the ability of the participant to withdraw his or her account, as well as the amount in the account available for withdrawal. Those rules are being published separately in part 1653.

Section 1650.3 describes what constitutes a "separation from Government employment" for purposes of determining who is entitled to withdraw his or her TSP account. Section 8433 of title 5 limits the ability to withdraw an account from the TSP to persons who have "separated from Government employment." This limitation is in keeping with the primary purpose of the TSP as a retirement plan under which contributions and earnings are afforded favorable tax treatment because they will be used primarily to fund retirement benefits.

Section 1650.3 makes it clear that the term "separation from Government employment" encompasses separation from positions in the Federal Government, the Postal Service, and in organizations that have employees who by statute are eligible to contribute to the TSP. For example, certain employees of employee organizations and employees working for a state or local government on an Intergovernmental Personnel Act (IPA) assignment are eligible to participate in the TSP under the provisions of Public Law 100-238. (See 5 CFR Part 1620).

Under these regulations, separation from such positions will be considered a separation from Government employment (unless the participant returns to his or her position with the Federal Government).

Section 1650.3 also makes it clear that the Board interprets the term "separation" to mean separation from Government employment (as described above) for at least 31 full calendar days. Because Congress limited access to the often significant amounts of money in TSP accounts to persons who had separated from Government employment, the Board determined that persons transferring between Government jobs (for example) should not be able to gain access to their TSP accounts after a short break in service. Thus the regulation states that a break in service must be at least 31 full calendar days. Similar rules have been adopted by Congress to limit access to refunds under the FERS and CSRS basic annuity programs.

Section 1650.4 sets forth rules for dealing with employees who are rehired by the Government before they withdraw their TSP accounts. Because the Board has decided to define "separation" to mean a break in service of 31 or more full calendar days, it is necessary to establish procedures to ensure that participants who are withdrawing have the requisite break in service. Therefore, § 1650.4(a) describes the statements that participants must make concerning their employment status and the length of their expected break in service in order to be able to withdraw their TSP accounts.

This "self-certifying" approach was deemed preferable to an approach requiring the agency immediately to report all rehired employees. Because rehired employees are not permitted to resume TSP contributions until the next election period (see 5 U.S.C. 8432(b)), agencies may not need to report transactions to the TSP concerning these employees for up to six months after the date of rehire. Consequently, information concerning the rehired employee would not otherwise be reported to the TSP promptly or within a consistent timeframe after the date of rehire. Also, the Board wanted to avoid imposing upon the employing agencies the administrative burden of reporting every rehire action to the TSP, when only a few of those actions would ever affect TSP withdrawals. Because false information provided by the participant is subject to criminal penalties, self-certification was deemed a reasonable way to ensure that persons who have been rehired (or expect to be rehired)

within 31 days are prevented from withdrawing their accounts.

Section 1650.4(b) states the rules for persons who are rehired after 31 full calendar days but still want to withdraw the portion of their accounts attributable to the earlier period of employment. Section 1650.4(b) provides that such a participant can only withdraw the portion of the account balance attributable to the first period of employment. The term "attributable to the first period of employment" means amounts contributed to the account during the period of employment to which the separation relates and any earnings on those amounts as of the date of payment. Amounts contributed after the date of rehire and earnings on such amounts are excluded.

Section 1650.4(b) also provides that, if the amount in the account attributable to the first period of employment is more than \$3,500, the participant can withdraw that amount only if he or she submits a valid withdrawal request form prior to the date the participant is rehired. As explained above, this requirement is fulfilled by the requirement that the participant state on the form if he or she has been rehired. It was not feasible to require that withdrawal actually occur before the date of rehire, because administrative delays on the part of the employing agency or the Board might make withdrawal impossible before then. However, it seemed inappropriate to give rehired participants the ability to withdraw their funds at any time (perhaps many years) after they were rehired. Thus, the Board has established the rule that the withdrawal request must be submitted before the date of rehire.

If, however, the amount in the participant's account attributable to the first period of employment is \$3,500 or less, the participant is eligible to receive an "automatic cashout" under the procedures set forth in § 1650.17 without submitting any withdrawal forms. Therefore, the participant cannot be required to submit a withdrawal form prior to rehire in order to receive a withdrawal. For such a participant, § 1650.4(b) allows the scheduled automatic cashout of the amount attributable to the first period of employment to proceed, even if the person has already been rehired (after more than 31 days) and no forms are submitted.

Section 1650.5 states the rule that a participant cannot withdraw his or her TSP account until an outstanding loan has either been paid in full or declared to be a taxable distribution. Under the TSP loan program (see 5 CFR Part 1655),

a participant who separates with an outstanding loan must repay his or her loan in full within 90 days. If the participant does not do so, the outstanding loan balance is declared to be a taxable distribution. The participant can also speed up the declaration of the taxable distribution by signing a statement that he or she does not intend to repay the loan. The withdrawal must be delayed until this process is completed so that, if the participant pays the loan in full, that amount will be available to be included in the withdrawal.

Section 1650.6 recognizes that, in certain circumstances, a withdrawal cannot be paid because a TSP participant's account is "frozen." The most common reason for placing a freeze on an account is that the Board receives a retirement benefits court order or an alimony or child support enforcement order. The Board is required by title 5 to honor the terms of such orders if they meet certain requirements. The requirements for such orders are discussed in part 1653, which was published in proposed form in the **Federal Register** on October 26, 1994 (59 FR 53874). If such orders are found to be qualifying, the account cannot be paid to the participant until the interest of the other party (most frequently a spouse or former spouse) has been determined and paid out. At that point the account can be "unfrozen" and the withdrawal can proceed. See 5 CFR 1653.3. This section also recognizes that the Board may need to place a freeze on an account for administrative reasons. For example, an employing agency error may have caused the account to have the wrong address. Until such an error is corrected, the account should not be paid.

Section 1650.7 discusses the timing of TSP withdrawal payments. The TSP is a "monthly valued" plan. This means that the earnings (either positive or negative) on a TSP account, and thus the "value" of the account, is determined once a month as of the end of the preceding month. For the TSP, this determination occurs at approximately mid-month, although the exact date varies, depending on the availability of the applicable rates of return. A TSP withdrawal cannot occur until the valuation process is completed for a given month; otherwise the amount to be withdrawn cannot be accurately determined. (Since all TSP funds are held in individual accounts, the amount to be withdrawn must be determined precisely; if too much or too little is paid, the difference must be absorbed by all other accounts.) The timing of the withdrawal payments in a monthly

valued plan is also important for determining the timing of other actions, such as when a withdrawal election can be changed or canceled (see § 1650.14).

Subpart B of part 1650 describes the basic TSP withdrawal options which, as noted above, are now available to any TSP participant who is eligible to withdraw his or her TSP account balance under the rules stated in subpart A, and subject to the limitations found in the other rules identified in § 1650.2. The conditions for eligibility contained in subpart A are not repeated for each withdrawal method identified in subpart B. Subpart B contains the rules governing the way each withdrawal option can be exercised (for example, the availability of certain annuity options to certain participants), as well as the rules for transferring all or part of certain withdrawal payments to an IRA or other eligible retirement plan, making deferred withdrawal elections, changing withdrawal elections, and imposing limits on the date by which a withdrawal choice must be made.

Section 1650.8 provides that all TSP participants can withdraw their account balances in a single payment. The term "lump sum" is not used, since that term has a specific meaning for the tax treatment of the payment, which may or may not be applicable to all payments made under this method. All or part of the single payment received under this method can be transferred to an IRA or other eligible retirement plan in accordance with the rules set forth in § 1650.11.

Section 1650.9 sets forth the types of monthly payment options a participant can choose. Section 8433 of title 5 requires that the Board offer a participant the opportunity to receive his or her account in "one or more substantially equal payments to be made not less frequently than annually * * *." Under this provision, the board has established three options for calculating monthly payments. The options provide only for monthly payments because this was considered to be consistent with the presumed intent of the law to provide participants with the ability to receive a regular stream of retirement income from their TSP accounts.

Under the first option, described in § 1650.9(a)(1), a participant can choose monthly payments in a fixed dollar amount of his or her choice, with a minimum monthly payment amount of \$25. The minimum amount avoids the administrative expense of processing small monthly payments. Under this option, which allows the participant to receive a predictable monthly income,

payments continue until the entire account is paid out. When the account decreases to a point that the amount remaining is less than two payments, the remaining amount is paid out in a single payment. Therefore, the last payment may be larger than the chosen amount.

The second option, described in § 1650.9(a)(2), allows the participant to choose a fixed number of monthly payments instead of a fixed monthly payment amount. Under this option, payments are initially calculated by dividing the account balance by the number of payments chosen. Initial payments must be at least \$25 for the election to be accepted. Payments are then recalculated each year in January by dividing the immediately preceding December 31 account balance by the remaining number of payments. Although each year's monthly payment amount will be different from that of the previous year, because earnings will be reflected in the annual recalculation, the annual recalculation allows the account to be paid out as evenly as possible within the elected number of payments. Each year's monthly payment amount will be increased to \$25, if necessary.

The third option, described in § 1650.9(a)(3), allows a participant to have monthly payments calculated based on Internal Revenue Service (IRS) life expectancy multiple Table No. V, found at 26 CFR 1.72-9. Under this method, the monthly payment amount is calculated by dividing the account balance by the multiple from the table corresponding to the participant's age on his or her birthday in the year payments are being made, and then dividing the result by 12. Payments are recalculated in January of each year based upon the December 31 account balance and the multiple corresponding to the participant's age as of his or her birthday in the new payment year. This method allows a participant to spread monthly payments over his or her entire life expectancy. It also allows a participant who separates from Government employment prior to the year in which he or she becomes age 55 to avoid the 10 percent early withdrawal penalty on monthly payments received before the participant becomes age 59½. This result is allowed under the Internal Revenue Code because payments are based on life expectancy. The early withdrawal penalty cannot be avoided by choosing the other two monthly payment methods. However, payments made under a TSP annuity (see § 1650.10) are also exempted because they are based on life expectancy.

Section 1650.9(b) states the rule that a participant cannot change his or her

monthly payment election and choose a different calculation method or amount once payments have begun. This restriction is imposed because the statute requires that the payments be "substantially equal." If a participant were able to change the calculation method or amount at will, the payments would not comply with the "substantially equal" requirement. Such a process could also create significant administrative burdens for the Plan.

However, under § 1650.9(c), a participant can decide at any time to receive his or her remaining account balance in a final single payment. This recognizes that participants may have a sudden need to liquidate their account balances, for example in cases where there is a medical emergency. It was determined that the "substantially equal" rule was not violated where the account would be entirely liquidated through a final single payment.

Section 1650.9(d) Provides that, once they begin receiving equal payments, participants may invest their TSP account balances in accordance with the rules provided in part 1601, Participant Choices of Investment Funds. Under current regulations, participant accounts must be invested entirely in the Government Securities Investment Fund (G Fund) while participants are receiving monthly payments. It was originally thought that accounts of persons receiving monthly payments should be invested only in the G Fund to ensure a predictable monthly payment stream. However, with the elimination of the restrictions on participants' investment choices which originally existed, demand has grown to eliminate this restriction also. The calculation methods described above automatically account for positive and negative earnings associated with investing in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Investment Fund (F Fund), thus insuring a relatively predictable income stream. The Board intends in the future to allow participants receiving monthly payments to invest in any investment funds offered by the TSP. When this change is implemented, part 1601 will be amended, and the language of § 1650.9(d) will automatically incorporate the new rules.

Section 1650.10 describes the rules relating to TSP annuities, including the various annuity options and features among which a participant can choose. TSP annuities are monthly payments made to the participant during his or her life or to the participant and a designated joint annuitant while either one is alive. The TSP purchases annuities for participants from a private

sector annuity provider using the participant's entire account balance (although in some cases minimum distribution amounts must first be paid directly to the participants).

Section 1650.10(a) describes the basic procedures and rules relating to the purchase of a TSP annuity. Annuities are purchased in the mid-month processing cycle and payments commence within approximately thirty days after purchase. Because it is not practicable to purchase annuities using small account balances, the minimum amount that can be used to purchase an annuity is \$3,500. All TSP annuities and annuity features have equivalent actuarial values. This means that selection of additional features will result in a reduction in the amount of the monthly annuity payment.

Section 1650.10(b) describes the basic annuity types. Section 8434 of title 5 requires that the Board offer certain types of annuities for the TSP. The basic types of annuities offered by the TSP conform to the statutory requirement. These are a single life annuity for the participant with level payments (§ 1650.10(b)(1)), a joint life annuity for the participant and his or her spouse with level payments (§ 1650.10(b)(2)), a single life annuity or a joint life annuity with the spouse that has annual increasing payments (§ 1650.10(b)(3)), and a joint life annuity with a former spouse or a person having an insurable interest in the participant (§ 1650.10(b)(4)).

Section 1650.10(b)(3) describes how the annual increase for increasing annuities is calculated. The amount of the increase is based upon the change in the Consumer Price Index. The statute prohibits decreases in annual payments; therefore, the annual increases will be zero in years where the relevant change in the index is either negative or zero. Also, because of Internal Revenue Code limits, the annual increase cannot be more than 3 percent.

Section 1650.10(b)(4) describes the rules for the option of a joint life annuity with a person other than the spouse. As required by the statute, this option can only be used to purchase a joint life annuity with a former spouse or with a person having an "insurable interest" in the participant. The statute gives the Board discretion to define the term "insurable interest" in regulations. The definition of "insurable interest" is based upon the idea that the survivor could be expected to obtain continuing financial benefit from the participant's life. Under this definition, close relatives are presumed to have an insurable interest in the participant. However, a method is also prescribed by

which the participant can establish by affidavit that another person, not in the presumed group, has an insurable interest in him or her.

Section 1650.10(c) describes the two levels of survivor benefits that are available for joint life annuities, whether with a spouse or with another person. These particular levels were not prescribed by statute, but rather were adopted by the Board based upon annuity options commonly available in the private sector. A participant who chooses a joint life annuity must also choose one of these levels. The 50 percent survivor benefit provides that, whenever one of the joint annuitants dies, the other will receive, during his or her lifetime, 50 percent of the benefit that was paid to the participant when both were alive. The 100 percent survivor benefit provides that the same amount paid to the participant when both the participant and the joint annuitant are alive will continue to be paid to the survivor during the survivor's lifetime. The initial payment amount will be lower if the 100 percent survivor level is chosen than if the 50 percent survivor level is chosen. Under the IRS minimum distribution rules, the 100 percent survivor benefit cannot be chosen for a joint annuity with someone other than the spouse if the joint annuitant is more than 10 years younger than the participant. This rule is designed to prevent the use of retirement annuities to transfer income to a much younger beneficiary (for example, a child or grandchild). However, the regulations provide (in accordance with IRS regulations) that a 100 percent benefit can be chosen for a joint annuity with any former spouse, regardless of age, if a qualifying court order (as described in part 1653) so provides.

Section 1650.10(d) describes two additional features that can be combined with certain annuities. These features are not required by statute. The Board decided to make them available based upon its evaluation of annuity features that participants would be likely to find attractive. If either feature is chosen, the monthly payment amount is reduced.

The first feature, described in § 1650.10(d)(1), is the "cash refund" feature. This feature, which can be selected for any type of annuity, provides that, if the participant (or the participant and joint annuitant in the case of a joint annuity) dies before the amount used to purchase the annuity has been paid out, the remainder of the amount used to purchase the annuity will be paid in a lump sum to the beneficiary or beneficiaries named by

the participant. The participant who chooses this feature must, before the annuity can be purchased, complete Form TSP-11-B, Beneficiary Designation for a TSP Annuity, to name the beneficiaries to receive this payment and to state the portion of the payment to be paid to each beneficiary. After the annuity is purchased, the participant may change the beneficiaries. If the annuity is a joint life annuity, the survivor (even if not the participant) may also change the beneficiaries or their shares. Beneficiary changes after the purchase of an annuity are handled between the annuitant and the annuity provider and do not involve the TSP.

The second feature, described in § 1650.10(d)(2), is known as the "10-year certain" feature. This feature provides that, if a single life annuity is chosen, payments will be made for at least 10 years. If the participant dies before the 10-year period expires, payments will be made to a designated beneficiary for the remainder of the period. Beneficiaries under this feature are designated on a Form TSP-11-B, in the same way as under the cash refund feature. The 10-year certain feature is only available for single life annuities, because it is expected that, in most cases, payments under joint life annuities would last at least 10 years.

Section 1650.10(e) provides that the Board can establish other types of annuities and other optional annuity features, as it did in the case of the cash refund and 10-year certain features. The statute makes it clear that the Board can decide to offer additional annuity options.

Section 1650.10(f) reflects the requirement found in the statute that any annuity method must be available to separating participants for at least 5 years after the date it is eliminated. This provision appears to have been designed to prevent the Board from eliminating annuity methods precipitously, when a participant may have been planning to choose such a method. Although the 5 year requirement may have little applicability to younger participants, it appears to be designed to preserve options for those participants who are near retirement age and who might be able to change their retirement date if they knew in advance that an annuity method would cease to be offered. Although the statute only speaks in terms of elimination of a "method of payment," the regulation makes it clear that the Board would apply this rule to any annuity type (other than the statutorily prescribed annuity types), any benefit level, or any other annuity feature (such as the cash refund feature)

that the Board has previously decided to offer.

Section 1650.11 describes the situations under which a participant can have the TSP transfer all or a portion of a TSP withdrawal payment to an IRA or other eligible retirement plan, as defined in the Internal Revenue Code. Transfer of the entire account balance to an eligible retirement plan was mandated by Congress in FERSA. At the time of issuance of the original interim regulations in 1987, the participant had to choose to transfer either the entire account balance or nothing at all. However, in 1992 Congress enacted Public Law 102-318, which required all tax-qualified retirement plans (including the TSP), effective in 1993, to allow the transfer to an IRA or other eligible retirement plan of all or part of any "eligible rollover distribution." Any part of an eligible rollover distribution that is not directly transferred is subject to mandatory 20 percent income tax withholding. Therefore, beginning in 1993, the Board implemented changes in the TSP transfer option to comply with the requirements of Public Law 102-318. This means that all TSP withdrawals that are identified as "eligible rollover distributions" can now be transferred, in whole or in part, to an IRA or other eligible retirement plan. Eligible rollover distributions include all single payments, as well as final single payments that end a series of monthly payments. Thus, a participant who wants his or her entire account balance transferred can elect a single payment (which is an option now available to all) and can have the entire payment transferred.

Because the definition of "eligible rollover distribution" in Public Law 102-318 includes monthly payments expected to be made for fewer than 10 years and not based on life expectancy, certain TSP monthly payments also qualify for transfer. Section 1650.11 explains that monthly payments can be transferred if the participant elects fewer than 120 payments (i.e., fewer than 10 years of monthly payments), or the participant elects a monthly payment amount which, when divided into the account balance, yields a number less than 85. This number was chosen based upon an assumed annual earnings rate of 8 percent for the account. This means that a fixed payment amount chosen by the participant that would result in fewer than 85 payments if paid in equal monthly installments from his or her existing account balance could be expected to result in fewer than 120 payments if the account accrued earnings at the rate of 8 percent per year

during the payout period. TSP monthly payments calculated based on life expectancy cannot be transferred. This is because the Internal Revenue Code does not allow any payment which is calculated based on life expectancy to be transferred. (This also means that TSP annuity payments and minimum distribution payments cannot be transferred.)

Section 1650.11(d) states the definition of an eligible retirement plan, which is found in section 402(c)(8) of the Internal Revenue Code. An IRA is included in the definition of an eligible retirement plan. The Internal Revenue Code also requires that an IRA or other eligible retirement plan be maintained in the United States, which is defined as the 50 states and the District of Columbia. Plans maintained in foreign countries or in United States possessions, such as Puerto Rico, the Virgin Islands, or Guam, do not qualify.

Section 1650.12(a) contains the basic rule establishing the participant's right to choose that a single payment be made, or that monthly payments or an annuity begin, at a future date of his or her own choosing. This type of election is referred to as a "deferred withdrawal" election, and is specifically authorized in 5 U.S.C. 8433(b).

Section 1650.12(b) describes the time limit placed by 5 U.S.C. 8433(b) upon the participant's right to make a deferred withdrawal election. Under that section, a participant must choose a date for his or her withdrawal to begin that is no later than April 1 of the year following the year the participant becomes age 70½. Because the TSP is a monthly valued plan, as explained in § 1650.7, the month chosen for payment under § 1650.12(b) must be no later than March of the relevant year, so that a payment can be made by April 1. Also, because the first annuity payment is made approximately 30 days after the annuity is purchased, an annuity will be purchased in the monthly cycle prior to the month chosen. Therefore, if a participant chooses an annuity to begin in March of the year following the year in which he or she becomes age 70½ (i.e., the latest possible date), the annuity will be purchased in February of that year. Persons who are already past the limit date (e.g., participants who separate when they are age 73) when they make a withdrawal election cannot make a deferred withdrawal election. They must elect an immediate withdrawal.

The rule stated in § 1650.12(b) generally comports with the minimum distribution requirements found in the Internal Revenue Code. The minimum distribution rules generally require

separated participants to begin receiving payments from their accounts by April 1 of the year following the year they become age 70½. The rule set forth in § 1650.12(b) requires a TSP withdrawal method to begin by the same date. Eventually, the Board expects the rule set forth in § 1650.12(b), in conjunction with the rule set forth in § 1650.13 concerning the date by which an election is required, to eliminate the need for most required minimum distribution payments, except for those made in conjunction with another withdrawal election. However, as explained further in the discussion of § 1650.13, because some participants over age 70½ who leave Government employment with less than 10 years of service will still be able to defer making a decision, minimum distribution payments will continue to be made to this group.

Sections 1650.12 (c) and (d) describe the TSP procedures for notifying participants who have made deferred withdrawal elections of what actions they are permitted or required to take prior to implementation of their election.

Section 1650.13 provides rules for implementing the provisions of 5 U.S.C. 8433(h)(2). This section requires a TSP participant to make a withdrawal election by February 1 of the year following the year in which the later of three events occurs—the participant becomes age 65, the participant separates from Government employment, or the participant has 10 years of Plan participation. The statute expresses the latter event as “the tenth anniversary of the year in which * * * [the participant] became subject to this subchapter.” The regulation reflects the Board’s interpretation of this language to mean the effective date of the first contribution made to the participant’s TSP account, but no earlier than April 1, 1987, the date the TSP first began accepting contributions. The effective date of the first contribution is also chosen for administrative purposes, because it is a date that is clearly reflected in TSP records.

For most participants (i.e., those with 10 or more years of Government service who separate or retire before age 65), this provision will operate to require a choice by February 1 of the year following the year in which the participant reaches age 65. The participant is still permitted to make a deferred election at that time, but the date of the deferral is subject to the limits stated in § 1650.12(b), which require that a deferred election must begin by April 1 of the year following the year a participant becomes age 70½.

Together, these provisions ensure that a decision about the method of withdrawing the TSP account is made on or about the time a participant might be expected to retire and that payments begin no later than the year following the year in which the participant becomes age 70½. This allows both the TSP and the participant’s spouse, who has certain rights with respect to the election, to be aware of the chosen withdrawal method by the normal retirement age. This also prevents the participant from receiving his or her entire account balance through the minimum distribution process without spousal involvement. However, because TSP participation only began in April 1987, the 10th anniversary of the first TSP contributions will not occur until 1997. Therefore, a withdrawal election will not need to be made under this provision until February 1, 1998, at the earliest.

By establishing a date by which the participant must make an election, the Board has also interpreted the statute as providing that a separated TSP participant need not make any withdrawal election prior to that date. Instead, a participant who separates from Government employment can decide to leave his or her account in the Plan and take no action until the required date.

If a withdrawal election is not made by the required date, the statute provides that the “benefits under this subchapter will be paid as an annuity * * *.” Because the 10-year anniversary has not yet occurred for any TSP participant, there has as yet been no need to address participants who do not make an election by the required date. Section 1650.13(d) describes procedures which reasonably accommodate the language of the statute requiring that an annuity be purchased for such persons, yet also recognizes that the TSP may not be able to purchase an annuity for a participant who will not provide required information (such as a current address).

Section 1650.13(d) also provides that, for married FERS participants, the annuity that must be purchased is the required joint life annuity with the spouse. Although this is not explicitly stated in 5 U.S.C. 8433(h)(3), 5 U.S.C. 8435 requires a married FERS participant to purchase the required joint life annuity with his or her spouse if the spouse does not waive that right. If the required joint life annuity were not purchased under § 1650.13, a married FERS participant could effectively avoid the requirement to purchase a joint life annuity with the spouse by refusing to make any election

at all. For single participants covered by FERS and all participants covered by CSRS, however, a single life annuity will be purchased, since there is no statutory requirement to purchase a joint life annuity with the spouse.

Section 1650.13(d)(3) recognizes that, in certain cases, the participant will not provide the TSP with adequate information to purchase the required annuity (either single life or joint life with spouse). Because the law does not allow accounts in this status to remain open indefinitely, the regulation describes a procedure whereby an account will be forfeited if there is not adequate information to purchase an annuity. However, if any person (such as the spouse or guardian, for example) can provide such information, the account will be restored and the annuity purchased. At the time of forfeiture, the participant generally would lose the right to choose a different method of withdrawal.

Section 1650.14 sets forth rules concerning participants who change or cancel their withdrawal elections. Generally, participants can change their withdrawal elections as long as they have met any applicable spousal rights requirements with respect to the new election. For example, if a spouse of a FERS participant waives his or her right to a survivor benefit when the participant chooses a single life annuity, the participant can later change his or her election to a single payment without obtaining another waiver from that spouse. However, if the participant has a different spouse when a new election is made, a waiver would be required from the new spouse.

The right both to change and cancel a withdrawal election is also affected by the date the payment is scheduled. As explained in § 1650.7, the TSP is a monthly valued plan. As such, payments are scheduled to occur once a month during the mid-month processing cycle. Participants who have their accounts invested only in the G Fund can change or cancel their election as long as the change or cancellation can be processed prior to the mid-month cycle in which the account is scheduled to pay. This is because the underlying value of investments in the G Fund does not fluctuate. However, if a participant has all or a portion of his or her account invested in the C Fund or the F Fund, the underlying value can fluctuate. Therefore, the change or cancellation must be processed no later than the second-to-last business day (the “cutoff date”) of the month preceding the mid-month cycle in which the account is scheduled to pay, so that the amount to be withdrawn can be insulated from

fluctuations in value after the end of the month. Failure to remove funds scheduled for withdrawal from the C and F Funds on the last day of the month would result in all other accounts having to absorb the fluctuations in the C and F Fund values after the end of the month. However, a person with money in the C or F Funds can change (but not cancel) his or her withdrawal election after the cutoff date if, under the changed election method, there is no change in the amount to be withdrawn from the C and F Funds as originally scheduled.

Section 1650.14(d) provides an example to illustrate the treatment of elections to change withdrawal methods made by participants whose accounts are invested in the C or F Funds.

Subpart C of part 1650 sets forth procedures adopted by the Board for processing TSP withdrawal elections and payments.

Section 1650.15 sets forth the information that must be provided by the employing agency both to the TSP and to the participant at the time of the participant's separation from Government employment.

Section 1650.15(a) requires the agency to inform the TSP recordkeeper of the participant's separation from Government employment. This is done by submitting a code indicating the separation from employment and the date of separation. Until this information is received, the withdrawal cannot be processed. Also, a withdrawal cannot occur until 30 days have elapsed since the date of separation reported by the agency. This interval ensures that normal contributions are received before the date of withdrawal and that the participant has a reasonable period of time after receipt of withdrawal and tax information from the employing agency to make withdrawal and tax withholding decisions. (The 30-day interval described in this section does not operate to enforce the rule stated in § 1650.3 that an employee rehired within 31 days is not permitted to withdraw. As explained earlier, the TSP does not maintain information on the date employees are rehired. Therefore, the 30-day interval could not ensure that employees rehired within that period were not paid. Rather, as provided in § 1650.4, that requirement is enforced by requiring the participant to certify to the length of his or her break in service and his or her employment status.)

Section 1650.15(b) requires the agency to provide certain withdrawal and tax information to the participant at the time he or she separates from employment. The Board relies on the

employing agencies to distribute this information to participants. This includes TSP withdrawal materials and forms and the written explanation required by section 402(f) of the Internal Revenue Code. The Code requires plans to furnish this explanation to participants within a reasonable time prior to their withdrawal. In order to facilitate TSP participants' ability to withdraw their accounts in a timely manner, the Board has instructed employing agencies to provide participants with this information when they separate. (The TSP also mails this notice to each participant upon receipt of separation information from his or her agency, unless withdrawal forms have already been received from the participant.)

Section 1650.16 states the basic rule that, in order to withdraw his or her TSP account, a participant must complete the basic TSP withdrawal form (TSP-70) and any other form required by the TSP. As a result of the standardization of TSP withdrawal options accomplished by Public Law 103-226, the Board has been able to devise a withdrawal form that can be used by every participant to make a withdrawal choice under any of the withdrawal methods. Participants with account balances of \$3,500 or less are also eligible to receive an "automatic cashout" of their accounts which requires no paperwork, as described in § 1650.17.

Section 1650.17 describes the procedures for paying out TSP accounts of \$3,500 or less. These procedures differ from those relating to other TSP accounts because of Public Law 101-335. That statute amended title 5 of the United States Code to provide that a separated TSP participant with an account balance of \$3,500 or less will automatically be paid the amount in his or her account in a single payment, unless the participant elects another withdrawal method. This payment is referred to as an "automatic cashout." These participants can also choose to leave their accounts in the Plan.

Section 1650.17(c) states that spousal notice and waiver provisions (to be published as subpart D) do not apply to the withdrawal of accounts of \$3,500 or less. This also reflects the provisions of Public Law 101-335.

Section 1650.17(d) confirms that the automatic cashout provisions apply only while the account is \$3,500 or less. If the account increase to more than \$3,500 (due to additional contributions or earnings), these rules cease to apply and the participant must submit withdrawal forms as required in § 1650.16.

Section 1650.17(e) excludes accounts of less than \$5.00 from the automatic cashout procedures. Many participants have contacted the TSP asking that they not continue to be sent information about very small account balances. Often these accounts represent amounts deposited into a participant's account after an initial withdrawal, where a former employing agency has discovered that it owned small amounts of lost earnings to a group of employees. (See part 1605 for rules concerning agency paid lost earnings.) The Board has also determined that, for accounts of less than \$5.00, it is not prudent to undertake the administrative processing costs associated with an automatic cashout. The Board plans to forfeit these accounts to the Plan automatically under procedures to be developed. The procedures will allow participants to reclaim these amounts, if they wish.

Subpart D contains rules relating to spousal rights that apply when a TSP participant withdraws his or her account.

Section 1650.18 implements the rules regarding the rights of spouses of FERS employees with respect to TSP withdrawals. These rules are found at 5 U.S.C. 8435. As amended by Public Law 103-226, that section requires that spouses of FERS participants with account balances of more than \$3,500 waive their right to a joint and survivor annuity before the participant can choose any other form of TSP withdrawal. Section 8435 further requires the Board, if it offers more than one form of a joint life annuity with the spouse, to choose the particular form of annuity which will be purchased if the spouse does not sign a waiver. In accordance with this requirement, which is referred to as the "signature requirement," the Board has chosen the joint life annuity with 50% survivor benefit, level payments, and no cash refund feature. Therefore, § 1650.18(a) prohibits a FERS participant who is married at the time he or she submits a withdrawal request from selecting a withdrawal option other than this form of joint life annuity unless his or her spouse waives this annuity. Section 1650.18(b) states the forms which the spouse must sign to execute a valid waiver. Section 1650.18(c) confirms that these procedures do not apply to FERS participants whose account balances are \$3,500 or less.

Section 1650.19(a) implements the requirement found in 5 U.S.C. 8351 (as amended by Public Law 103-226) that CSRS participants with account balances of more than \$3,500 cannot withdraw their accounts until their spouses are sent notice of their

withdrawal elections. This is referred to as the "notice requirement." Section 1650.19(b) states that the required notice will be sent to the last known mailing address for the spouse, but that it is the responsibility of the participant to provide that address. Since the TSP does not maintain account information for spouses, and since spouses are usually not employed with the Federal Government, the TSP must rely on the participant to provide this information. The participant who provides false information is subject to criminal prosecution. Section 1650.19(c) confirms that the notice requirement does not apply to CSRS participants whose account balances are \$3,500 or less.

Section 1650.20 describes the spousal rights rules that apply when either FERS or CSRS participants change their withdrawal elections. Section 1650.20(a) describes the rules that apply to spouses of FERS participants. The basic rule, as required by 5 U.S.C. 8435, is that spouses of FERS participants must waive their right to the annuity described in § 1650.18 with respect to a changed withdrawal election if the spouse did not waive the annuity right with respect to the original election. Therefore, the regulation states that, unless the same spouse has already signed a waiver of the prescribed form of annuity, the participant cannot change that withdrawal election without obtaining a waiver. If the participant has previously obtained an exception to the same spouse's signature, as described in § 1650.22, the exception is deemed applicable for one year from the date the participant signed the request form. After that date, either a waiver or a new exception must be obtained, because the circumstances surrounding the granting of the earlier exception may have changed.

Section 1650.20(b) states that the spouse of a married CSRS participant must be notified when that participant changes his or her withdrawal election. 5 U.S.C. 8351 requires another notice whenever a change of withdrawal election is made. However, if an exception to the notice requirement for the same spouse has been granted pursuant to § 1650.21, that exception is good for one year, and notice of a changed withdrawal election will not be necessary during that period.

Section 1650.21 provides that the Executive Director may grant an exception to the notice requirement for spouses of CSRS employees (as described in § 1650.19) where the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be

determined. Section 1650.21 describes the process for establishing that a spouse's whereabouts are unknown. This section has been revised to allow participants who are seeking an exception to the notice requirement based on whereabouts unknown to submit statements in lieu of affidavits or declarations in support of their requests. These statements must be made pursuant to 18 U.S.C. 1001, which provides that:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

To ensure that the persons making statements are aware of the possible penalty, § 1650.21(c) requires inclusion of the following on each statement: I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both. The Board has determined that this statement and the sanctions of 18 U.S.C. 1001 provide adequate protection against false statements, and therefore participants seeking exceptions can be relieved of the burden of providing notarized affidavits.

Section 1650.22 allows the Executive Director to grant an exception to the requirement to obtain the signature of the spouse of a FERS employee if the spouse's whereabouts cannot be determined (based on the same requirements as stated in § 1650.21) or if "exceptional circumstances warrant the exception." Section 1650.22 describes how a participant can establish that "exceptional circumstances" exist.

Section 1650.22(b)(2)(iii) has been revised to clarify the wording that must be included in a court order to justify the granting of an exception based on the express language of the order.

To ease the burden on participants further, §§ 1650.21 and 1650.22 are also being revised to delete the requirement that the participant seeking an exception from the spouse notice or signature requirements obtain and provide only documents bearing an original signature or which are embossed or which bear the imprint of a seal. Participants may not submit photocopies of documents.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only the ability of Federal employees to withdraw their TSP accounts and Board procedures relating to those withdrawals.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making these regulations effective in less than 30 days. The new withdrawal rules will be implemented during the March 1995 payment cycle, which will begin on March 10, 1995. Therefore, the new withdrawal rules must be in place by that date.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, Pensions.

Roger W. Mehle,
Executive Director.

Federal Retirement Thrift Investment Board

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is revised to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

- 1650.1 Definitions.
- 1650.2 Eligibility.
- 1650.3 Separation from Government employment.
- 1650.4 Rehired employees.
- 1650.5 Outstanding loans.
- 1650.6 Frozen accounts.
- 1650.7 Monthly cycle for withdrawal payments.

Subpart B—Withdrawal Options

- 1650.8 Single payment.
- 1650.9 Monthly payments.
- 1650.10 Annuities.
- 1650.11 Transfer of withdrawal payments.
- 1650.12 Deferred withdrawal elections.
- 1650.13 Required date for making withdrawal election.
- 1650.14 Changes and cancellation of withdrawal election.

Subpart C—Procedures for Withdrawing TSP Accounts

- 1650.15 Information to be provided by agency.
- 1650.16 Accounts of more than \$3,500.
- 1650.17 Accounts of \$3,500 or less.

Subpart D—Spousal Rights

- 1650.18 Spouses of FERS participants.
- 1650.19 Spouses of CSRS participants.
- 1650.20 Spousal rights when participant changes withdrawal election.
- 1650.21 Executive Director's exception to requirement to notify the spouse.
- 1650.22 Executive Director's exception to the requirement to obtain the spouse's signature.

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8467(b)(5), and 8474(c)(1).

Subpart A—General**§ 1659.1 Definitions.**

As used in this part:

Account balance means, unless otherwise specified, the nonforfeitable valued account balance of a TSP participant as of the most recent month end prior to the date a withdrawal occurs.

Board means the Federal Retirement Thrift Investment Board, established pursuant to 5 U.S.C. 8472.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent retirement system.

Participant means any person with an account in the Thrift Savings Plan.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms requesting spouse information to be submitted to the TSP, including a spouse from whom the participant is legally separated, and including a person with whom a participant is living in a relationship that constitutes a common-law marriage in the jurisdiction in which they live.

Thrift Savings Plan, TSP, or Plan means the Federal Retirement Thrift Savings Plan, established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8431 *et seq.*

Thrift Savings Plan Service Office means the office established by the Board to service separated TSP participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161-1500.

§ 1650.2 Eligibility.

A participant who separates from Government employment, as described in § 1650.3, is eligible to withdraw his or her account by one of the withdrawal methods described in subpart B of this part, subject to the rules relating to spouses' rights (set forth in subpart D of this part), minimum distributions, and

domestic relations orders. A participant cannot choose a withdrawal method while he or she is employed by the Government.

§ 1650.3 Separation from Government employment.

For purposes of this part, a separation from Government employment occurs when a participant ceases employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for at least 31 full calendar days.

§ 1650.4 Rehired employees.

(a) A participant who is reemployed in a position in which he or she can participate in the TSP on or before the 31st full calendar day after the date of separation is not eligible to withdraw his or her TSP account. In order to be eligible to withdraw his or her TSP account, a participant must state on Form TSP-70 (Withdrawal Request) that he or she is separated and expects the separation to last at least 31 full calendar days. If a participant is scheduled for an automatic cashout, as described in § 1650.17, the cashout will be canceled if the participant states to the TSP that he or she has been reemployed or expects to be reemployed within 31 full calendar days.

(b) A participant who is reemployed after 31 full calendar days after his or her date of separation in a position in which the participant is eligible to participate in the TSP may withdraw the portion of his or her account balance attributable to the earlier period of employment. However, if the amount in the account attributable to the first period of employment is greater than \$3,500, the participant must submit, prior to the date of his or her reemployment, a properly completed withdrawal form (TSP-70) choosing a withdrawal option that results in an immediate withdrawal. A reemployed participant may not make a deferred withdrawal election, as described in § 1650.12, or an election of monthly payments, as described in § 1650.9. If a reemployed participant is already receiving monthly withdrawal payments, such payments will stop.

§ 1650.5 Outstanding loans.

A participant is not entitled to withdraw his or her account balance until any loan outstanding at the time of separation has either been repaid in full or declared to be a taxable distribution.

§ 1650.6 Frozen accounts.

A participant may not withdraw any portion of his or her account balance if

the account is frozen as a result of a retirement benefits court order or a child support or alimony enforcement order or as a result of a freeze placed on the account by the Board for another reason.

§ 1650.7 Monthly cycle for withdrawal payments.

The value of a TSP account is determined at approximately mid-month, as of the end of the preceding month, after earnings are allocated to the account. TSP transactions that require valued account balances, such as withdrawals, can only occur after the value of an account has been determined. Because of this, withdrawal payments are generally made once a month, during what is known as the "mid-month processing cycle."

Subpart B—Withdrawal Options**§ 1650.8 Single payment.**

A participant can withdraw his or her entire account in a single payment.

§ 1650.9 Monthly payments.

(a) A participant can withdraw his or her account balance in two or more substantially equal monthly payments, to be calculated under one of the following methods:

(1) A fixed monthly payment amount. The amount must be at least \$25 per month and must satisfy any minimum distribution requirements. Payments will be made each month until the account is expended. If the last scheduled payment would be less than the chosen amount, it will be combined and paid with the previous payment;

(2) A fixed number of monthly payments. The participant's month-end account balance for the month preceding the month of the first payment will be divided by the number of payments chosen in order to determine the monthly amount. If that amount is less than \$25, the election is rejected. The payment must also meet any minimum distribution requirements. In January of each subsequent year, the TSP will divide the December 31 account balance from the prior year by the remaining number of payments in order to determine that year's monthly payments. If the monthly payment amount is less than \$25, it will be increased to \$25. This process will be repeated each year until the account is expended; or

(3) A monthly payment amount calculated using the factors set forth in Internal Revenue Service expected return multiple table V, 26 CFR 1.72-9. There is no \$25 minimum monthly payment under this method. In the year payments begin, the monthly payment

amount is calculated by dividing the month-end account balance for the month preceding the month of the first payment by the factor from table V based upon the participant's age as of his or her birthday in that year. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the December 31 account balance from the previous year by the factor from Table V based upon the participant's age as of his or her birthday in the year payments will be made. That amount is divided by 12 to yield the monthly payment account.

(b) A participant who chooses to receive monthly payments calculated using one of the three methods set forth in paragraph (a) of this section cannot change the method after payments begin. Also, except as provided in paragraph (c) of this section, the participant cannot change the number of payments or the payment amount after payments begin.

(c) A participant receiving monthly payments can choose to receive the remainder of his or her account balance in a final single payment.

(d) A participant receiving monthly payments may invest his or her account balance as provided in 5 CFR part 1601.

§ 1650.10 Annuities.

(a) A participant can withdraw his or her entire account balance in the form of a life annuity. The participant's account balance must be \$3,500 or more in order for the TSP to purchase an annuity. If a participant chooses this method, the TSP will be sent forms asking him or her to choose an annuity method, name a beneficiary (if required), and provide any necessary spousal waiver or spousal information. Upon receipt of the required information, the TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance, except for any amount necessary to satisfy minimum distribution requirements. The first annuity payment will be made approximately 30 calendar days after the purchase of the annuity. The annuity will provide a payment for life to the participant and, if applicable, the participant's survivor, in accordance with the type of annuity chosen.

(b) The following types of annuities are available to participants:

(1) A single life annuity with level payments. This annuity is based upon the life expectancy of the participant at the time of purchase and provides monthly payments to the participant as long as the participant lives.

(2) A joint life annuity for the participant and his or her spouse with level payments. This annuity is based upon the combined life expectancies of the participant and the spouse and provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as he or she is alive.

(3) Either a single life or joint life annuity (as described in paragraph (b)(1) or (b)(2) of this section) where the amount of the monthly payment can increase each year on the anniversary date of the first annuity payment. The amount of the increase is based on the average annual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as measured between the period of July through September in the second calendar year preceding the anniversary date and July through September in the calendar year preceding the anniversary date. For example, if the anniversary date of an increasing annuity occurs in November of 1995, the amount of the increase will be calculated based upon the change in the index between the July–September period in 1993 and the July–September period in 1994. Monthly payments cannot decrease, nor can they increase more than 3 percent each year. If this option is chosen in conjunction with a joint life annuity with the spouse, the annual increase continues to apply to benefits received by the survivor. (4) A joint life annuity, with level payments, for the participant and another person who either is a former spouse or has an insurable interest in the participant. This annuity is based upon the combined life expectancies of the participant and the other person. It provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as he or she is alive. Increasing payments cannot be chosen for a joint annuity with a person other than the spouse.

(i) A person has an "insurable interest" in a participant if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (whether blood or adopted, but not by marriage) who is closer than a first cousin will be presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (b)(4)(ii) of this section has an insurable interest in him or her by submitting with the annuity request an affidavit

from a person other than the participant or the joint annuitant demonstrating that the designated joint annuitant has an insurable interest (as defined in paragraph (b)(4)(i) of this section) in the participant.

(c) Participants who choose a joint life annuity (with either a spouse or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the payment made when both the participant and the joint annuitant are alive. A 100 percent survivor benefit provides a monthly payment to the survivor which is the same amount as the payment made when both the participant and the survivor are alive. Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option, except that the 100 percent survivor benefit can be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order) only if the joint annuitant is not more than 10 years younger than the participant.

(d) The following mutually exclusive features can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, if applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the named beneficiaries. The participant (or the joint annuitant, if the participant is deceased) may name or change the beneficiaries. This feature can be combined with any other annuity option.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will continue to be made to the beneficiaries selected by the participant until 120 payments have been made. This feature can be combined with any single life annuity option, but cannot be selected in conjunction with any joint life annuity option.

(e) The Board can, from time to time, establish other types of annuities, other levels of survivor benefits, and other annuity features.

(f) The Board can, from time to time, eliminate a type of annuity (except for those annuities described in paragraph (b) of this section), a survivor benefit level, or an annuity feature. However, if the Board does so, it must continue to

allow participants to purchase annuities of the eliminated type or containing the eliminated feature for 5 years after the date the decision to eliminate the annuity type or feature is announced in the **Federal Register**.

(g) Once an annuity has been purchased, the type of annuity, any annuity features, and the identity of the joint annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.11 Transfer of withdrawal payments.

(a) At the participant's request, the TSP will transfer directly to an eligible retirement plan all or part of any withdrawal that is an "eligible rollover distribution," as defined in 26 U.S.C. 402(c)(4). A withdrawal method that is not an eligible rollover distribution cannot be transferred.

(b) The following TSP withdrawal methods are considered eligible rollover distributions:

(1) A single payment, as described in § 1650.8;

(2) Monthly payments, as described in § 1650.9, where payments are expected to last less than 10 years at the time they begin, according to the following rules:

(i) If the participant elects a number of monthly payments, the number of payments must be fewer than 120;

(ii) If the participant elects a monthly payment amount, the amount, when divided into the participant's account balance as of the end of the month prior to the first payment, must yield a number less than 85.

(3) A final single payment, as described in § 1650.9(c).

(c) The following withdrawal methods are not eligible rollover distributions:

(1) Any annuity purchased by the TSP.

(2) Any monthly payment that does not meet the rules set forth in paragraph (b)(2) of this section, including any monthly payment computed based on the Internal Revenue Service expected return multiple table V (see § 1650.9(a)(3)).

(3) Any minimum distribution payment or any portion of another payment which represents a minimum distribution payment.

(d) An eligible retirement plan is a plan defined in 26 U.S.C. 402(c)(8). There are three types of eligible retirement plans: an Individual Retirement Arrangement (IRA) (which can be either an individual retirement account or an individual retirement annuity), a plan qualified under 26 U.S.C. 401(a), and a plan described in 26 U.S.C. 403(a). An IRA or other eligible retirement plan must be maintained in the United States, which

means one of the 50 states or the District of Columbia.

§ 1650.12 Deferred withdrawal elections.

(a) Subject to paragraph (b) of this section, a participant who separates from Government employment and elects to withdraw his or her account under one of the methods provided in §§ 1650.8, 1650.9, or 1650.10 may specify a future date (which shall be a month and year) for payment of the withdrawal.

(b) The future date chosen under this section cannot be later than March of the year following the year in which the participant becomes age 70½. If that date has already passed when the participant makes an election, the participant cannot choose a future date.

(c) If the withdrawal method chosen for future payment is a single payment or monthly payments (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen that such payments are scheduled to begin. If the payments are eligible rollover distributions, the participant may choose to transfer all or part of the payments to an Individual Retirement Arrangement (IRA) or another eligible retirement plan.

(d) If the withdrawal method chosen for future payment is an annuity (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen. At that time, the participant will be sent information asking him or her to choose an annuity method, name a beneficiary (if the cash refund or 10-year certain feature is chosen), and provide any necessary spousal waiver or spousal information.

§ 1650.13 Required date for making withdrawal election.

(a) A participant who separates from Government employment need not elect one of the withdrawal methods provided in §§ 1650.8, 1650.9, or 1650.10 until February 1 of the year following the latest of these dates:

(1) The date upon which the participant becomes age 65;

(2) The date that is 10 years after the effective date of the first TSP contribution made by or on behalf of the participant (but not earlier than April 1, 1987); or

(3) The date the participant separated from Government employment.

(b) A separated participant may make a withdrawal election before the date described in paragraph (a) of this section, but is not required to do so.

(c) A participant will fulfill the requirements of paragraph (a) of this section by making a deferred withdrawal election (as described in § 1650.12) by the required date, provided that the date described in § 1650.12(b) has not already occurred.

(d) If a participant does not make an election by the date required by this section, the TSP will purchase an annuity for the participant in accordance with the following rules:

(1) If a participant is covered by the Federal Employees' Retirement System (FERS) and is married on the date an election is required by this section, the TSP will purchase a joint life annuity with his or her spouse with a 50 percent survivor benefit, level payments, and no cash refund feature.

(2) If the participant is covered by the Civil Service Retirement System (CSRS) or the participant is not married on the date an election is required by this section, the TSP will purchase a single life annuity with no other features.

(3) If the participant fails to provide the TSP with adequate information to purchase one of the annuities described in either paragraph (d)(1) or (d)(2) of this section, as appropriate, by the date an election is required by this section, and such information cannot be obtained by the TSP from other sources, the participant's account will be forfeited. If the TSP is later provided with the required information, the TSP will purchase an annuity in accordance with this section, using the amount forfeited. No earnings will be credited to this amount after the date of forfeiture.

§ 1650.14 Changes and cancellation of withdrawal election.

(a) *Basic rule.* Subject to paragraphs (b) and (c) of this section and the rules relating to spouses' rights, a participant who has separated from Government employment can change his or her withdrawal election to any other withdrawal election or can cancel his or her withdrawal election if the change or cancellation can be processed before the withdrawal election is scheduled for disbursement.

(b) *Cutoff dates.* For participants who have any part of their accounts invested in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Index Investment Fund (F Fund), a withdrawal payment that has been approved is scheduled on the second-to-last business day of the month preceding the month the withdrawal payment is to be made. For participants whose accounts are invested entirely in the Government Securities Investment Fund (G Fund), a withdrawal payment that has been approved is scheduled by

the close of business on the day before the mid-month processing cycle in which payments are made.

(c) *Special Rule for C and F Fund Participants.* Participants who have any part of their accounts invested in the C or F Funds may also change to another withdrawal method if the requested change can be processed before the close of business on the day before the mid-month processing cycle in which payment will be made, and provided that under the new withdrawal method the amounts they have invested in the C or F Funds will still be withdrawn as originally scheduled from those Funds during the mid-month processing cycle.

(d) *Example for participants whose accounts are invested in the C or F Funds.* This example illustrates the operation of the rules set forth in paragraphs (b) and (c) of this section for participants who have a portion of their accounts invested in the C or F Funds.

Example 1. Assume that such a participant wishes to withdraw the account by purchasing a single life annuity at the earliest possible date. The participant is married and has obtained the necessary waiver from her spouse for the purchase. All necessary forms have been submitted by the middle of April; thus, on the second-to-last business day in April, the annuity will be scheduled to be purchased in the May mid-month processing cycle. However, in late April, the participant decides that she would rather receive the account in a single payment. The participant must submit a new Form TSP-70 electing the new withdrawal method. (She does not need a new spousal waiver, since her spouse already waived his right to a survivor benefit.) In this case, the participant will be able to change to a single payment if her properly completed Form TSP-70 is received and processed by the TSP recordkeeper by the close of business on the day before the May mid-month processing cycle. If that occurs, she will receive the single payment in May, instead of having the annuity purchased then.

If, on the other hand, the participant wished to cancel her annuity purchase and leave her money in the Plan (or to change to a deferred withdrawal option), the TSP recordkeeper would have to be able to process her cancellation or change no later than the second-to-last business day in April. If that did not occur, the annuity purchase would proceed in May.

Subpart C—Procedures for Withdrawing TSP Accounts

§ 1650.15 Information to be provided by agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government employment, his or her employing agency must report the separation (including the date of separation) to the TSP recordkeeper. Until the TSP recordkeeper receives this

information from the employing agency, it cannot process a withdrawal for the participant. A withdrawal cannot occur until at least 30 full calendar days have elapsed after the date of separation.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government employment, his or her employing agency must furnish the participant with the most recent copies of the TSP withdrawal booklet, withdrawal forms, and tax notice. The employing agency is also responsible for counseling participants concerning TSP withdrawals.

§ 1650.16 Accounts of more than \$3,500.

A participant whose account balance is more than \$3,500 must submit a properly completed withdrawal election on Form TSP-70, Withdrawal Request, and any other form required by the TSP, in order to elect a withdrawal of his or her account balance.

§ 1650.17 Accounts of \$3,500 or less.

(a) Unless he or she has already submitted a complete withdrawal election and can be scheduled for payment, a participant whose account balance is \$3,500 or less as of the month end following receipt of separation information from the employing agency will be sent a notice informing him or her that the account balance will be paid directly to the participant automatically in the third mid-month cycle following the date of the notice if the account balance is still \$3,500 or less on the date of payment. The notice will inform the participant that he or she can:

(1) Choose to transfer all or part of this payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan;

(2) Choose another withdrawal method (as described in subpart B of this part);

(3) Choose to have the payment made directly to him or her as soon as possible; or

(4) Choose to leave his or her money in the Plan.

(b) If the participant does not take one of the actions described in paragraph (b) of this section, payment will be made as scheduled.

(c) No spousal rights attach to any withdrawals made to a participant whose account balance is \$3,500 or less.

(d) If a participant's account balance is \$3,500 or less after separation but later increases to more than \$3,500, this section will cease to apply to that participant.

(e) This section does not apply to accounts containing a balance of less than \$5.00.

Subpart D—Spousal Rights

§ 1650.18 Spouses of FERS participants.

(a) A married participant covered by FERS whose account balance exceeds \$3,500 must choose to withdraw his or her TSP account by having the TSP purchase a joint and survivor annuity with the spouse. The annuity chosen must have level payments, a 50% survivor benefit, and no cash refund. A married FERS participant may only choose another withdrawal election, a different type of annuity, or different annuity features if the spouse waives his or her right to the required annuity.

(b) A spouse can waive his or her right to the annuity required in paragraph (a) of this section only by signing Form TSP-70, Withdrawal Election, or Form TSP 11-C, Spouse Information and Waiver, in the appropriate place. Once a form containing a waiver is filed with the TSP Service Office, the spouse's waiver is irrevocable.

(c) A married participant covered by FERS whose account balance is \$3,500 or less is not required to choose the annuity identified in paragraph (a) of this section and does not need to obtain a waiver from his or her spouse to make any withdrawal election.

§ 1650.19 Spouses of CSRS participants.

(a) The spouse of a married participant covered by CSRS whose account balance exceeds \$3500 must be sent notice of the participant's withdrawal of his or her account balance prior to the participant's withdrawal.

(b) The TSP Service Office will send the notice required in paragraph (a) of this section by first class mail to the last address of the spouse on file. The participant is responsible for providing the TSP Service Office with the spouse's correct address.

(c) The spouse of a married participant covered by CSRS whose account balance is \$3500 or less is not entitled to the notice prescribed in paragraph (a) of this section.

§ 1650.20 Spousal rights when participant changes withdrawal election.

(a) A married participant covered by FERS who has made a withdrawal election and who wants to change to another withdrawal election other than the annuity required in section 1650.17(a) must obtain a waiver from the spouse to which he or she is married on the date the new withdrawal form is signed, unless:

(1) That spouse previously signed a waiver of the required annuity in connection with another withdrawal election made by the participant; or

(2) The participant was granted an exception, under the procedures set forth in § 1650.22, to the requirement to obtain that spouse's signature for a withdrawal election made by the participant within one year of the date the form requesting the change is processed by the TSP.

(b) The spouse of a married participant covered by CSRS who has made a withdrawal election and who wants to change to another withdrawal election must be notified again prior to the withdrawal, unless the participant was granted an exception, under the procedures set forth in § 1650.21, to the spouse notice requirement within one year of the date the form requesting the change is processed by the TSP.

§ 1650.21 Executive Director's exception to requirement to notify the spouse.

(a) Wherever in the regulations in this subpart it is required that the Executive Director give notice of an action to the spouse of a participant, an exception to this requirement may be granted in cases in which the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception based on whereabouts unknown must be submitted to the Executive Director on Form TSP-16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A judicial determination (court order) which states that the spouse's whereabouts cannot be determined;

(2) A police or Governmental agency determination that is signed by the appropriate department or division head which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons.

(i) Each statement must be signed and dated and must state the following:

I understand that a false statement or willful misrepresentation is punishable under Federal Law (18 U.S.C. 1001) by a fine or imprisonment or both.

(ii) The participant's statement must give the full name of his or her spouse, declare the inability to locate the spouse, and state the efforts made to locate the spouse. Negative statements such as "I have not seen or heard from him/her" or "I have had no contact with him/her" are not sufficient. Examples of attempting to locate the spouse include checking with relatives and mutual friends or using telephone directories or directory assistance for the city of last known address.

(iii) The statements from two other persons must support the participant's statement that the participant does not

know the whereabouts of his or her spouse.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal and the one-year period of validity of an approved exception apply to exceptions for loans under 5 CFR 1655.18.

§ 1650.22 Executive Director's exception to the requirement to obtain the spouse's signature.

(a) In this subpart, if the spouse's signature is required, the Executive Director may grant an exception to this requirement if the participant can show that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.21; or

(2) Due to exceptional circumstances, requiring the spouse's signature would otherwise be inappropriate.

(i) An exception to the spousal signature requirement may be granted based on exceptional circumstances only when the participant presents a judicial determination (court order) or a governmental agency determination signed by the appropriate department or division head. A court order or a determination must contain a finding or a recitation of such exceptional circumstances regarding the spouse as would warrant an exception to the signature requirement.

(ii) Exceptional circumstances is narrowly construed and includes such circumstances as when a court order:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her Thrift Savings Plan account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal and the one-year period of validity of an

approved exception apply to exceptions for loans under 5 CFR 1655.18.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 1240

[AMS-FV-93-704CF]

RIN 0581-AB23

Honey Research, Promotion, and Consumer Information Order and Rules and Regulations Issued Thereunder; Termination of Order Provision and Conforming Correction of the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim final rule which terminated a provision of the Honey Research, Promotion, and Consumer Information Order (Order) and deleted conflicting and confusing language in the Rules and Regulations issued under the Order. This action is being taken to clarify and correct the Order and rules and regulations which were amended in August 1991.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-So., Washington, DC 20090-6456; telephone (202) 720-9915.

SUPPLEMENTARY INFORMATION: These amendments are issued pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended on November 28, 1990 [104 Stat. 3904, 7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 10 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provision of such order, or any